

CHAPTER 115: TOBACCO REGULATIONS

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§ 115.01 PURPOSE

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco products and tobacco related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices, and the sales, possession and use are violations of both state and federal laws; and because studies, which are accepted and adopted, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of serious health problems which subsequently place a financial burden on all levels of government; this chapter shall be intended to regulate the sale, possession and use of tobacco, tobacco products and tobacco related devices, electronic cigarettes, electronic delivery device, and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws to protect minors against the serious effects associated with the illegal use of tobacco, tobacco

products and tobacco related devices, electronic delivery device, and nicotine or lobelia delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

§ 115.02 DEFINITIONS

Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CIGARS. Any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in M.S. § 297F.01, subd. 3 as amended from time to time.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices.

ELECTRONIC DELIVERY DEVICE AND ELECTRONIC CIGARETTE. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

HOOKAH. "Hookah" shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually packaged.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LOOSIES. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$1.00 per cigar.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a truck, van, automobile, kiosk, trailer or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PUBLIC PLACE. Any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SAMPLING. The lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the customer and the licensee or

employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

SMOKING. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation.

SMOKING LOUNGE. A tobacco products shop which allows customers to be seated.

TOBACCO or TOBACCO RELATED PRODUCTS. Tobacco and tobacco products includes cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including by vaping, or any component, part, or accessory of a tobacco product; cigars; pipe tobacco, cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; dipping tobaccos; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of tobacco, tobacco related products, tobacco related devices and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

TOBACCO-RELATED DEVICES. Tobacco-related devices include any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking or vaping of tobacco or tobacco products.

VAPOR LOUNGE. A vapor products shop which allows customers to be seated.

VAPOR PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of electronic delivery devices, electronic cigarettes and related products and in which the sale of other products is merely incidental. "Vapor products shop" does not include a vapor products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products or tobacco-related devices upon the insertion of money,

tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco-related device.

§ 115.03 LICENSE

No person shall sell or offer to sell any tobacco, tobacco products, tobacco related devices, electronic cigarettes, electronic delivery devices, or nicotine or lobelia delivery devices without first having obtained a license to do so from the city.

(A) *Application.* An application for a license to sell tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery devices, or nicotine or lobelia delivery devices shall be made on a form provided by the city. The applications shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought and any additional information the city deems necessary. Upon receipt of a completed application, the City Administrator shall forward the application to the City Council for action at its next regularly scheduled Council meeting. If the City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(B) *Action.* If the City Council may either approve or deny the license, or it may delay action for a reasonable period of time necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Administrator shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(C) *Term.* All licenses issued under this chapter shall be valid for the calendar year of the date of issue and expire on December 31 (January 1 – December 31).

(D) *Licensee's responsibility.* Every licensee is responsible for the conduct in the licensed establishment, and any sale of tobacco or tobacco products by any employee authorized to sell in the establishment is the act of the licensee

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in this Title XI: Business Regulations.

(F) *Transfers.* All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

(G) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.

(H) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

(I) *Renewals.* The renewal of a license under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The applicant must provide proof that an employee training program on tobacco sales has been provided during the license year by submitting records supporting that training at the time of their license renewal each year.

(J) *Issuance is a privilege and not a right.* The issuance of a license issued under this chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(K) *Proximity to youth-oriented facilities.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices within 1,000 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location for at least one year before the date this section was enacted into law. For the purpose of this section, a youth-oriented facility includes any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products consumed or used primarily by persons under the age of 21.

(L) *Smoking.* Except as allowed under Minn. Stat. § 144.414, smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products generally is prohibited.

(M) *Penalty,* see Section 115.12 VIOLATIONS.

§ 115.04 FEES

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be set by Council resolution or ordinance.

Penalty, see §115.12 VIOLATIONS.

§ 115.05 BASIS FOR DENIAL OF LICENSE

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:

- (1) The applicant is under the age of 18 years;

(2) The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco, tobacco products, tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices;

(3) The applicant has had a license to sell tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application;

(4) The applicant fails to provide any information required on the application or provides false or misleading information; and

(5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation from holding such a license.

(B) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

§ 115.06 PROHIBITED SALES

(A) *Prohibited Sales.* It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices:

(1) To any person under the age of 18 years;

(2) By means of any type of vending machine, except as may otherwise be provided in this chapter;

(3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product or tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices and whereby there is not a physical exchange of tobacco, tobacco product or tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices between the licensee or the licensee's employee and the customer;

(4) By means of loosies as defined in § 115.02;

(5) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana or other deleterious, hallucinogenic, toxic or controlled substances, except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products;

(6) By any other means, to any other person or in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

(B) Smoking and Sampling Prohibitions.

(1) Except for exceptions listed in Minn. Stat. § 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in 144.4167, subd. 4, tobacco sampling, including sampling of electronic delivery devices and products used in electronic delivery devices, is specifically prohibited in the city.

(2) To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work and that persons entering such places are not exposed involuntarily to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.

(C) Smoking Lounges. Smoking lounges, hookah lounges and vapor lounges are prohibited. However, the licensed establishment is permitted to set up and test new devices for customers purchasing new tobacco, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.

(D) Cigars. No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. This restriction shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$1.00 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco product shops only accessible to those 18 years or older.

(1) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01 subd. 13a.

(2) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.

(E) Penalty. See Section 115.12 VIOLATIONS.

§ 115.07 VENDING MACHINES

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Penalty. See Section 115.12 VIOLATIONS.

§ 115.08 SELF-SERVICE SALES

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer.

All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in tobacco, or tobacco products, tobacco-related devices, electronic delivery devices or electronic cigarettes, is exempt from the self-service merchandising provision if the license holder prohibits anyone under 18 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 18 years of age from entering the establishment.

§ 115.09 RESPONSIBILITY

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the licensee's employee to whatever penalties are appropriate under this chapter, state or federal law or other applicable law or regulation.

§ 115.10 COMPLIANCE CHECKS AND INSPECTIONS

All licensed premises shall be open to inspection by the local law enforcement or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.

Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products or tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices when such items are obtained or attempted to be obtained as a part of the compliance check.

No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational research or training purposes or required for the enforcement of a particular state or federal law.

§ 115.11 OTHER ILLEGAL ACTS

Unless otherwise provided, the following acts shall be a violation of this chapter.

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to any minor. Every licensee is responsible for the conduct in the licensed establishment, and any sale of tobacco or tobacco products by any employee authorized to sell in the establishment is the act of the licensee.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. This division shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices and it shall be a violation of this chapter for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. This division shall not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is

that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

§ 115.12 VIOLATIONS

(A) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the city administrator or other designated city officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The city administrator or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) *Costs.* If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.

(6) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(C) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven consecutive days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (C)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

§ 115.13 EXCEPTIONS AND DEFENSES

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, tobacco related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an

affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

§ 115.14 SEVERABILITY

If any section of this chapter is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without invalidating the section or provision.